



# State of Wisconsin


LEGISLATIVE REFERENCE BUREAU


## **RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/05/2013

(Per: PJK)

### **Appendix A ... segment IV**

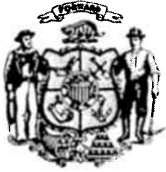
**Appendix A**  The drafting file for LRB 13-0016 (used to create 13-3081)  
(Representative Kleefisch)

**Appendix B**  The drafting file for LRB 11-3501 (used to create 13-0016)  
(Representative Kleefisch)

has been transferred to the drafting file for

## **2013 LRB-3081**

(Representative Kleefisch)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0016/2  
PJK:sac:jf

*Y mis run*

2013 BILL

*D-Info  
(in 6-12)*

1     **AN ACT** *to renumber* 767.531 (1), 767.531 (2) and 767.531 (3); *to renumber and*  
2     *amend* 767.511 (1j) and 767.531 (intro.) (except 767.531 (title)); *to amend*  
3     49.22 (9), 767.225 (1n) (b) 1., 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511  
4     (1n), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.59 (1c) (a)  
5     (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59 (1f) (b) 4., 767.59 (1f)  
6     (c) (intro.), 767.59 (2) (a), 767.59 (2) (b) and 767.85 (2); and *to create* 767.511  
7     (1j) (b), 767.511 (1j) (c), 767.511 (1j) (d), 767.511 (1r), 767.59 (1c) (c), 767.59 (1f)  
8     (bm) and 767.59 (2m) of the statutes; **relating to:** child support changes,  
9     including prohibiting basing support on income over \$150,000 per year,  
10    deducting the amount of health insurance premiums from the support amount,  
11    prohibiting increasing support above the standard amount, prohibiting orders

**BILL**

- 1           that set minimum future support amounts, and requiring a support revision if  
2           there has been a substantial change in circumstances.
- 

***Analysis by the Legislative Reference Bureau***

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must pay 17 percent of his or her monthly income available for support for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations, including for high-income payers. For high-income payers, child support may be determined by multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

**BILL**

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill makes a few modifications to the way in which child support is determined. The bill provides that child support may be based only on a parent's actual income or imputed income based on earning capacity, as determined by the court. The bill provides that child support may not be based on any of a parent's assets and that it may not be based on any portion of a parent's annual gross income that exceeds \$150,000, annually adjusted in accordance with the consumer price index. The bill conforms the statutory provision that authorizes DCF to promulgate rules establishing the percentage standard with these changes.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's child support payments, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for health insurance premiums for the child for whom support is determined.

Under the bill, a court still may, upon a party's request, modify the amount of child support determined if the court finds that the amount is unfair to the child or either of the parties after considering the factors under current law. However, the court may modify the amount of child support it has determined in the manner provided in the statutes only by reducing that amount. The requirement that a court may only reduce the amount of support that it has determined in the manner provided in the statutes also applies to temporary support orders and to revisions of support orders.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill does not change this requirement; however, the bill also provides that, if the court does find that there has been a substantial change in circumstances, the court must revise the amount of child support under an existing order. In addition, the bill provides that, in an action to revise the amount of child or family support under an existing order, if the amount under the existing order is different from the amount that would be ordered using the new requirements and the court did not use the new requirements and did not specify the reasons why they were not used, the court must find a substantial change in circumstances that requires the court to revise the existing child support order.

The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes.

**BILL**

The bill prohibits a court from including a provision in a support order that sets a minimum amount of child support that may be ordered at a future time if the support order is revised. The bill also provides that, in an action to revise an order with respect to the amount of child support, regardless of when the order was granted, if it includes a provision that sets a minimum amount of support that may be ordered at a future time, that provision is void and may not be given effect.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 49.22<sup>✓</sup> (9) of the statutes is amended to read:

2           49.22 (9) The department shall promulgate rules that provide a standard for  
3 courts to use in determining a child support obligation based upon a percentage of  
4 the gross income ~~and assets~~ of either or both parents. The rules shall provide for  
5 consideration of the income of each parent and the amount of physical placement  
6 with each parent in determining a child support obligation in cases in which a child  
7 has substantial periods of physical placement with each parent. The rules may not  
8 base any amount of child support on any portion of a parent's gross income that  
9 exceeds \$150,000 per year.

10           **SECTION 2.** 767.225<sup>✓</sup> (1n) (b) 1. of the statutes is amended to read:

11           767.225 (1n) (b) 1. If the court makes a temporary child support order that  
12 deviates from the amount of support that would be required ~~by using the percentage~~  
13 ~~standard established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j), the court  
14 shall comply with the requirements of s. 767.511 (1n). The court may make a  
15 temporary child support order that deviates from the amount that would be required  
16 under s. 767.511 (1j) by reducing, but not by increasing, that amount.

17           **SECTION 3.** 767.511<sup>✓</sup> (1j) (title) of the statutes is amended to read:

**BILL**

1           767.511 (1j) (title) ~~PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY~~  
2       REQUIRED.

3           **SECTION 4.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (intro.) and  
4       amended to read:

5           767.511 (1j) (intro.) Except as provided in sub. (1m), the court shall determine  
6       child support payments by using in the following manner:

7           (a) Except as otherwise provided in this subsection, the court shall use the  
8       percentage standard established by the department under s. 49.22 (9).

9           **SECTION 5.** 767.511 (1j) (b) of the statutes is created to read:

10          767.511 (1j) (b) The court may not order any amount of child support based on  
11       any portion of a parent's gross income that exceeds \$150,000 per year. This income  
12       amount shall be adjusted annually, beginning in 2015, to reflect changes in the  
13       consumer price index for all urban consumers, U.S. city average, as determined by  
14       the U.S. department of labor.

15          **SECTION 6.** 767.511 (1j) (c) of the statutes is created to read:

16          767.511 (1j) (c) The court shall base child support payments only on a parent's  
17       actual income or on imputed income based on earning capacity, as determined by the  
18       court, and may not order any amount of child support based on the value of any of  
19       a parent's assets.

20          **SECTION 7.** 767.511 (1j) (d) of the statutes is created to read:

21          767.511 (1j) (d) When the court calculates the amount of a parent's child  
22       support payments, unless the parties agree otherwise in writing or orally in open  
23       court, the court shall reduce the amount determined under pars. (a) to (c) by the  
24       amount per month that the parent currently pays or is ordered to pay for health

**BILL****SECTION 7**

1 insurance premiums attributable to the child for whom the support is being  
2 determined.

3 **SECTION 8.** 767.511 (1m) (intro.) of the statutes is amended to read:

4 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a  
5 party, the court may modify, by reducing but not by increasing, the amount of child  
6 support payments determined under sub. (1j) if, after considering the following  
7 factors, the court finds by the greater weight of the credible evidence that ~~use of the~~  
8 ~~percentage standard~~ the amount of child support determined under sub. (1j) is unfair  
9 to the child or to any of the parties:

10 **SECTION 9.** 767.511 (1n) of the statutes is amended to read:

11 767.511 (1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.  
12 (1m) that ~~use of the percentage standard~~ the amount of child support determined  
13 under sub. (1j) is unfair to the child or the requesting party, the court shall state in  
14 writing or on the record the amount of support that would be required ~~by using the~~  
15 ~~percentage standard under sub. (1j)~~, the amount by which the court's order ~~deviates~~  
16 is reduced from that amount, its reasons for finding that ~~use of the percentage~~  
17 ~~standard~~ the amount of child support determined under sub. (1j) is unfair to the child  
18 or the party, its reasons for the amount of the ~~modification~~ reduction, and the basis  
19 for the ~~modification~~ reduction.

20 **SECTION 10.** 767.511 (1r) of the statutes is created to read:

21 767.511 (1r) MINIMUM REVISION AMOUNTS PROHIBITED. The court may not grant  
22 a child support order that sets a minimum amount of support that may be ordered  
23 in the future in the event that the child support order is revised under s. 767.59 or  
24 a substantially similar law of another state.

25 **SECTION 11.** 767.513 (2) of the statutes is amended to read:

**BILL**

1           767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support  
2           for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (d), the court shall  
3           specifically assign responsibility for and direct the manner of payment of the child's  
4           health care expenses. In assigning responsibility for a child's health care expenses,  
5           the court shall consider whether a child is covered under a parent's health insurance  
6           policy or plan at the time the court approves a stipulation for child support under s.  
7           767.34, enters a judgment of annulment, divorce, or legal separation, or enters an  
8           order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or  
9           (j), 767.501, or 767.805 (3), the availability of health insurance to each parent  
10          through an employer or other organization, the extent of coverage available to a  
11          child, and the costs to the parent for the coverage of the child. A parent may be  
12          required to initiate or continue health care insurance coverage for a child under this  
13          section. If a parent is required to do so, he or she shall provide copies of necessary  
14          program or policy identification to the custodial parent and is liable for any health  
15          care costs for which he or she receives direct payment from an insurer. This section  
16          shall not be construed to limit the authority of the court to enter or modify support  
17          orders containing provisions for payment of medical expenses, medical costs, or  
18          insurance premiums that are in addition to and not inconsistent with this section.

19          **SECTION 12.** 767.531<sup>✓</sup> (intro.) (except 767.531 (title)) of the statutes is  
20          renumbered 767.531 (1m) and amended to read:

21          **767.531 (1m)** The court may make a financial order designated "family  
22          support" as a substitute for child support orders under s. 767.511 and maintenance  
23          payment orders under s. 767.56. As part of a family support order, the court may not  
24          order a party to pay an amount of child support that exceeds the child support  
25          payments that the party would be required to pay under s. 767.511 (1j).



## BILL

## SECTION 12

1       **(2m)** A party ordered to pay family support under this section shall pay simple  
2       interest at the rate of 1% per month on any amount in arrears that is equal to or  
3       greater than the amount of child support due in one month. If the party no longer  
4       has a current obligation to pay child support, interest at the rate of 1% per month  
5       shall accrue on the total amount of child support in arrears, if any. Interest under  
6       this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05  
7       (8) and is paid to the department or its designee under s. 767.57.

8       **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall  
9       apply all payments received for family support as follows:

10       **SECTION 13.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

11       **SECTION 14.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

12       **SECTION 15.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

13       **SECTION 16.** 767.55 (2) (c) of the statutes is amended to read:

14       767.55 (2) (c) If the court enters an order under par. (am), it shall order the  
15       parent to pay child support equal to the amount determined by ~~applying the~~  
16       ~~percentage standard established under s. 49.22 (9)~~ 767.511 (1j) or equal to the  
17       amount of child support that the parent was ordered to pay in the most recent  
18       determination of support under this chapter. The child support obligation ordered  
19       under this paragraph continues until the parent makes timely payment in full for  
20       3 consecutive months or until the person participates in the program under s. 49.36  
21       for 16 weeks, whichever occurs first. The court shall provide in its order that the  
22       parent shall make child support payments calculated under s. 767.511 (1j) or (1m)  
23       after the obligation to make payments ordered under this paragraph ceases.

24       **SECTION 17.** 767.553 (1) (a) of the statutes is amended to read:

## BILL

*in the manner provided*

1           767.553 (1) (a) An order for child or family support under this chapter may  
2           provide for an annual adjustment in the amount to be paid based on a change in the  
3           payer's income if the amount of child or family support is expressed in the order as  
4           a fixed sum and based on the percentage standard established by the department  
5           determined under s. 49.22 (9) 767.511 (1j). No adjustment may be made under this  
6           section unless the order provides for the adjustment.

7           **SECTION 18.** 767.553 (1) (b) of the statutes is amended to read:

8           767.553 (1) (b) An adjustment under this section may not be made more than  
9           once in a year and shall be determined ~~on the basis of the percentage standard~~  
10          ~~established by the department~~ under s. 49.22 (9) 767.511 (1j).

11          **SECTION 19.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

12          767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either  
13          of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,  
14          or a county child support agency under s. 59.53 (5) if an assignment has been made  
15          under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either  
16          party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.  
17          49, a court may, except as provided in ~~par.~~ pars. (b) and (c), do any of the following:

18          **SECTION 20.** 767.59 (1c) (a) 1. of the statutes is amended to read:

19          767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the  
20          amount and payment of maintenance or child support and the appropriation and  
21          payment of the principal and income of property held in trust. The court may revise  
22          and alter a child support order regardless of whether the amount of support was  
23          determined by the court, by court approval of a stipulation of the parties, or through  
24          arbitration.

25          **SECTION 21.** 767.59 (1c) (c) of the statutes is created to read:

**BILL****SECTION 21**

1           767.59 (1c) (c) In an action under this section to revise a judgment or order as  
2           to the amount of child or family support, the court must revise the judgment or order  
3           as to the amount of child or family support if the court finds a substantial change in  
4           circumstances.

5           **SECTION 22.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

6           767.59 (1f) (b) (intro.) In an action under this section to revise a judgment or  
7           order with respect to the amount of child support, any of the following constitutes a  
8           rebuttable presumption of a substantial change in circumstances sufficient to justify  
9           require a revision of the judgment or order:

10          **SECTION 23.** 767.59 (1f) (b) 4. of the statutes is amended to read:

11          767.59 (1f) (b) 4. A. If the action is one to revise a judgment or order with respect  
12          to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183  
13          (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), a difference between  
14          the amount of child support ordered by the court to be paid by the payer and the  
15          amount that the payer would have been required to pay based on the percentage  
16          standard established by the department under s. 49.22 (9) if the court did not use the  
17          percentage standard in determining the child support payments and did not provide  
18          the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or  
19          767.511 (1n), whichever is appropriate.

20          **SECTION 24.** 767.59 (1f) (bm) of the statutes is created to read:

21          767.59 (1f) (bm) In an action under this section to revise a judgment or order  
22          with respect to an amount of child or family support ordered under this chapter, the  
23          court shall find a substantial change in circumstances sufficient to require revision  
24          of the judgment or order if the amount of child support ordered by the court to be paid  
25          by the payer is different from the amount that the payer would have been required

**BILL**

1 to pay under s. 767.511 (1j) and the court did not determine child support payments  
2 in the manner provided under s. 767.511 (1j) and did not provide the information  
3 required under s. 767.511 (1n).

4 **SECTION 25.** 767.59<sup>✓</sup> (1f) (c) (intro.) of the statutes is amended to read:

5 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or  
6 order with respect to an amount of child support, any of the following may constitute  
7 a substantial change of in circumstances sufficient to ~~justify~~ require revision of the  
8 judgment or order:

9 **SECTION 26.** 767.59<sup>✓</sup> (2) (a) of the statutes is amended to read:

10 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment  
11 or order with respect to child support payments, it shall do so ~~by using the percentage~~  
12 ~~standard established by the department in the manner provided~~ under s. ~~49.22 (9)~~  
13 767.511 (1j).

14 **SECTION 27.** 767.59<sup>✓</sup> (2) (b) of the statutes is amended to read:

15 767.59 (2) (b) Upon request by a party, the court may modify, by reducing but  
16 not by increasing, the amount of revised child support payments determined under  
17 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by  
18 the greater weight of the credible evidence, that the ~~use of the percentage standard~~  
19 amount of child support determined in the manner provided under s. 767.511 (1j) is  
20 unfair to the child or to any of the parties.

21 **SECTION 28.** 767.59<sup>✓</sup> (2m) of the statutes is created to read:

22 767.59 (2m) MINIMUMS ARE VOID. In an action under this section to revise a  
23 judgment or order with respect to the amount of child support, any provision in the  
24 judgment or order that sets a minimum amount of child support that may be ordered  
25 in the future in the event that the child support order is revised under this section

## BILL

1 or a substantially similar law of another state is void and may not be given effect by  
2 the court, regardless of when the judgment or order was granted.

3 **SECTION 29.** 767.85 (2) of the statutes is amended to read:

4 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),  
5 the court shall consider those factors that the court is required to consider when  
6 granting a final judgment on the same subject matter. If the court makes a  
7 temporary child support order that deviates from the amount of support that would  
8 be required by using the percentage standard established by the department under  
9 s. ~~49.22 (9)~~ 767.511 (1j), the court shall comply with the requirements of s. 767.511  
10 (1n). The court may make a temporary child support order that deviates from the  
11 amount that would be required under s. 767.511 (1j) by reducing, but not by  
12 increasing, that amount.

13 **SECTION 30. Initial applicability.**

14 (1) GENERAL. This act first applies to child or family support orders, including  
15 temporary orders and orders revising judgments or orders previously granted, that  
16 are granted on the effective date of this subsection.

17 (END)

Insert 12-16

→ Except as provided in subsection (2),

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/2ins

PJK:.....

*V. M. J.*

**INSERT 12-16**

1 2 ← (1) ANNUAL ADJUSTMENTS. The treatment of section 767.553 (1) (b) of the  
2 statutes first applies to adjustments made on the effective date of this subsection.

**(END OF INSERT 12-16)**

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/2dn

PJK:L:...

*Y m is run sac*

- date -

I have addressed the concern about annual adjustments in a manner that is different from the suggested manner. In the draft, s. 767.553 (1) (a) and (b) already state that any adjustment must be determined under s. 767.511 (1j). I have modified the language somewhat so that it now says "determined in the manner provided under s. 767.511 (1j)." In addition, in the initial applicability provision at the end of the draft, I have carved out annual adjustments so that s. 767.553 (1) (b) (i.e., determining an adjustment in the manner provided under s. 767.511 (1j)) applies to adjustments made on or after the effective date, in case annual adjustments are not considered to be orders. Let me know if you still have concerns about the adjustments being able to exceed the amount determined under s. 767.511 (1j).

The second concern relates to being able to revise a child support obligation immediately on the basis of the change in the law. Section 767.59 (1f) (bm) in the draft is intended to address that concern. Not only does it do what proposed s. 767.59 (1f) (b) 5. does, it gives the court less leeway to find that a revision is not required. Section 767.59 (1f) (b) in current law provides that any of the listed circumstances (which proposed subd. 5. would be) constitutes a *rebuttable presumption* of a substantial change in circumstances sufficient to require a revision. Under new s. 767.59 (1f) (bm) in the draft, the court *must find* a substantial change in circumstances sufficient to require revision to a child support order if the order was not determined under the new way of determining child support under s. 767.511 (1j) and the amount is different from the amount that would have been required under the new way of determining child support. If you would prefer, however, I can remove proposed s. 767.59 (1f) (bm) from the draft and include that circumstance (a difference in the amount of support) as subd. 5. under s. 767.59 (1f) (b). (Note that the basis for revising child support was included as subd. 5. under s. 767.59 (1f) (b) in the version of the draft previous to /1.)

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/2dn  
PJK:sac:ph

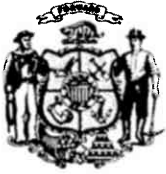
June 12, 2013

I have addressed the concern about annual adjustments in a manner that is different from the suggested manner. In the draft, s. 767.553 (1) (a) and (b) already state that any adjustment must be determined under s. 767.511 (1j). I have modified the language somewhat so that it now says "determined in the manner provided under s. 767.511 (1j)." In addition, in the initial applicability provision at the end of the draft, I have carved out annual adjustments so that s. 767.553 (1) (b) (i.e., determining an adjustment in the manner provided under s. 767.511 (1j)) applies to adjustments made on or after the effective date, in case annual adjustments are not considered to be orders. Let me know if you still have concerns about the adjustments being able to exceed the amount determined under s. 767.511 (1j).

The second concern relates to being able to revise a child support obligation immediately on the basis of the change in the law. Section 767.59 (1f) (bm) in the draft is intended to address that concern. Not only does it do what proposed s. 767.59 (1f) (b) 5. does, it gives the court less leeway to find that a revision is not required. Section 767.59 (1f) (b) in current law provides that any of the listed circumstances (which proposed subd. 5. would be) constitutes *a rebuttable presumption* of a substantial change in circumstances sufficient to require a revision. Under new s. 767.59 (1f) (bm) in the draft, the court *must find* a substantial change in circumstances sufficient to require revision to a child support order if the order was not determined under the new way of determining child support under s. 767.511 (1j) and the amount is different from the amount that would have been required under the new way of determining child support. If you would prefer, however, I can remove proposed s. 767.59 (1f) (bm) from the draft and include that circumstance (a difference in the amount of support) as subd. 5. under s. 767.59 (1f) (b). (Note that the basis for revising child support was included as subd. 5. under s. 767.59 (1f) (b) in the version of the draft previous to /1.)

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State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0016/2  
PJK:sac:ph

2013 BILL

1     **AN ACT** *to renumber* 767.531 (1), 767.531 (2) and 767.531 (3); *to renumber and*  
2     *amend* 767.511 (1j) and 767.531 (intro.) (except 767.531 (title)); *to amend*  
3     49.22 (9), 767.225 (1n) (b) 1., 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511  
4     (1n), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.59 (1c) (a)  
5     (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59 (1f) (b) 4., 767.59 (1f)  
6     (c) (intro.), 767.59 (2) (a), 767.59 (2) (b) and 767.85 (2); and *to create* 767.511  
7     (1j) (b), 767.511 (1j) (c), 767.511 (1j) (d), 767.511 (1r), 767.59 (1c) (c), 767.59 (1f)  
8     (bm) and 767.59 (2m) of the statutes; **relating to:** child support changes,  
9     including prohibiting basing support on income over \$150,000 per year,  
10    deducting the amount of health insurance premiums from the support amount,  
11    prohibiting increasing support above the standard amount, prohibiting orders

**BILL**

- 1           that set minimum future support amounts, and requiring a support revision if  
2           there has been a substantial change in circumstances.
- 

***Analysis by the Legislative Reference Bureau***

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must pay 17 percent of his or her monthly income available for support for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations, including for high-income payers. For high-income payers, child support may be determined by multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

**BILL**

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill makes a few modifications to the way in which child support is determined. The bill provides that child support may be based only on a parent's actual income or imputed income based on earning capacity, as determined by the court. The bill provides that child support may not be based on any of a parent's assets and that it may not be based on any portion of a parent's annual gross income that exceeds \$150,000, annually adjusted in accordance with the consumer price index. The bill conforms the statutory provision that authorizes DCF to promulgate rules establishing the percentage standard with these changes.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's child support payments, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for health insurance premiums for the child for whom support is determined.

Under the bill, a court still may, upon a party's request, modify the amount of child support determined if the court finds that the amount is unfair to the child or either of the parties after considering the factors under current law. However, the court may modify the amount of child support it has determined in the manner provided in the statutes only by reducing that amount. The requirement that a court may only reduce the amount of support that it has determined in the manner provided in the statutes also applies to temporary support orders and to revisions of support orders.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill does not change this requirement; however, the bill also provides that, if the court does find that there has been a substantial change in circumstances, the court must revise the amount of child support under an existing order. In addition, the bill provides that, in an action to revise the amount of child or family support under an existing order, if the amount under the existing order is different from the amount that would be ordered using the new requirements and the court did not use the new requirements and did not specify the reasons why they were not used, the court must find a substantial change in circumstances that requires the court to revise the existing child support order.

The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes.

**BILL**

The bill prohibits a court from including a provision in a support order that sets a minimum amount of child support that may be ordered at a future time if the support order is revised. The bill also provides that, in an action to revise an order with respect to the amount of child support, regardless of when the order was granted, if it includes a provision that sets a minimum amount of support that may be ordered at a future time, that provision is void and may not be given effect.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 49.22 (9) of the statutes is amended to read:

2           49.22 (9) The department shall promulgate rules that provide a standard for  
3 courts to use in determining a child support obligation based upon a percentage of  
4 the gross income ~~and assets~~ of either or both parents. The rules shall provide for  
5 consideration of the income of each parent and the amount of physical placement  
6 with each parent in determining a child support obligation in cases in which a child  
7 has substantial periods of physical placement with each parent. The rules may not  
8 base any amount of child support on any portion of a parent's gross income that  
9 exceeds \$150,000 per year.

10          **SECTION 2.** 767.225 (1n) (b) 1. of the statutes is amended to read:

11          767.225 (1n) (b) 1. If the court makes a temporary child support order that  
12 deviates from the amount of support that would be required ~~by using the percentage~~  
13 ~~standard established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j), the court  
14 shall comply with the requirements of s. 767.511 (1n). The court may make a  
15 temporary child support order that deviates from the amount that would be required  
16 under s. 767.511 (1j) by reducing, but not by increasing, that amount.

17          **SECTION 3.** 767.511 (1j) (title) of the statutes is amended to read:

**BILL**

1           767.511 (1j) (title) ~~PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY~~  
2       REQUIRED.

3           **SECTION 4.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (intro.) and  
4       amended to read:

5           767.511 (1j) (intro.) Except as provided in sub. (1m), the court shall determine  
6       child support payments by using in the following manner:

7           (a) Except as otherwise provided in this subsection, the court shall use the  
8       percentage standard established by the department under s. 49.22 (9).

9           **SECTION 5.** 767.511 (1j) (b) of the statutes is created to read:

10          767.511 (1j) (b) The court may not order any amount of child support based on  
11       any portion of a parent's gross income that exceeds \$150,000 per year. This income  
12       amount shall be adjusted annually, beginning in 2015, to reflect changes in the  
13       consumer price index for all urban consumers, U.S. city average, as determined by  
14       the U.S. department of labor.

15          **SECTION 6.** 767.511 (1j) (c) of the statutes is created to read:

16          767.511 (1j) (c) The court shall base child support payments only on a parent's  
17       actual income or on imputed income based on earning capacity, as determined by the  
18       court, and may not order any amount of child support based on the value of any of  
19       a parent's assets.

20          **SECTION 7.** 767.511 (1j) (d) of the statutes is created to read:

21          767.511 (1j) (d) When the court calculates the amount of a parent's child  
22       support payments, unless the parties agree otherwise in writing or orally in open  
23       court, the court shall reduce the amount determined under pars. (a) to (c) by the  
24       amount per month that the parent currently pays or is ordered to pay for health

**BILL****SECTION 7**

1 insurance premiums attributable to the child for whom the support is being  
2 determined.

3 **SECTION 8.** 767.511 (1m) (intro.) of the statutes is amended to read:

4 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a  
5 party, the court may modify by reducing but not by increasing, the amount of child  
6 support payments determined under sub. (1j) if, after considering the following  
7 factors, the court finds by the greater weight of the credible evidence that ~~use of the~~  
8 ~~percentage standard~~ the amount of child support determined under sub. (1j) is unfair  
9 to the child or to any of the parties:

10 **SECTION 9.** 767.511 (1n) of the statutes is amended to read:

11 767.511 (1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.  
12 (1m) that ~~use of the percentage standard~~ the amount of child support determined  
13 under sub. (1j) is unfair to the child or the requesting party, the court shall state in  
14 writing or on the record the amount of support that would be required ~~by using the~~  
15 ~~percentage standard~~ under sub. (1j), the amount by which the court's order ~~deviates~~  
16 is reduced from that amount, its reasons for finding that ~~use of the percentage~~  
17 ~~standard~~ the amount of child support determined under sub. (1j) is unfair to the child  
18 or the party, its reasons for the amount of the ~~modification~~ reduction, and the basis  
19 for the ~~modification~~ reduction.

20 **SECTION 10.** 767.511 (1r) of the statutes is created to read:

21 767.511 (1r) MINIMUM REVISION AMOUNTS PROHIBITED. The court may not grant  
22 a child support order that sets a minimum amount of support that may be ordered  
23 in the future in the event that the child support order is revised under s. 767.59 or  
24 a substantially similar law of another state.

25 **SECTION 11.** 767.513 (2) of the statutes is amended to read:

**BILL**

1           767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support  
2           for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (d), the court shall  
3           specifically assign responsibility for and direct the manner of payment of the child's  
4           health care expenses. In assigning responsibility for a child's health care expenses,  
5           the court shall consider whether a child is covered under a parent's health insurance  
6           policy or plan at the time the court approves a stipulation for child support under s.  
7           767.34, enters a judgment of annulment, divorce, or legal separation, or enters an  
8           order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or  
9           (j), 767.501, or 767.805 (3), the availability of health insurance to each parent  
10          through an employer or other organization, the extent of coverage available to a  
11          child, and the costs to the parent for the coverage of the child. A parent may be  
12          required to initiate or continue health care insurance coverage for a child under this  
13          section. If a parent is required to do so, he or she shall provide copies of necessary  
14          program or policy identification to the custodial parent and is liable for any health  
15          care costs for which he or she receives direct payment from an insurer. This section  
16          shall not be construed to limit the authority of the court to enter or modify support  
17          orders containing provisions for payment of medical expenses, medical costs, or  
18          insurance premiums that are in addition to and not inconsistent with this section.

19          **SECTION 12.** 767.531 (intro.) (except 767.531 (title)) of the statutes is  
20          renumbered 767.531 (1m) and amended to read:

21          767.531 (1m) The court may make a financial order designated "family  
22          support" as a substitute for child support orders under s. 767.511 and maintenance  
23          payment orders under s. 767.56. As part of a family support order, the court may not  
24          order a party to pay an amount of child support that exceeds the child support  
25          payments that the party would be required to pay under s. 767.511 (1j).

**BILL****SECTION 12**

1       **(2m)** A party ordered to pay family support under this section shall pay simple  
2       interest at the rate of 1% per month on any amount in arrears that is equal to or  
3       greater than the amount of child support due in one month. If the party no longer  
4       has a current obligation to pay child support, interest at the rate of 1% per month  
5       shall accrue on the total amount of child support in arrears, if any. Interest under  
6       this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05  
7       (8) and is paid to the department or its designee under s. 767.57.

8       **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall  
9       apply all payments received for family support as follows:

10       **SECTION 13.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

11       **SECTION 14.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

12       **SECTION 15.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

13       **SECTION 16.** 767.55 (2) (c) of the statutes is amended to read:

14       767.55 (2) (c) If the court enters an order under par. (am), it shall order the  
15       parent to pay child support equal to the amount determined ~~by applying the~~  
16       ~~percentage standard established under s. 49.22 (9)~~ 767.511 (1j) or equal to the  
17       amount of child support that the parent was ordered to pay in the most recent  
18       determination of support under this chapter. The child support obligation ordered  
19       under this paragraph continues until the parent makes timely payment in full for  
20       3 consecutive months or until the person participates in the program under s. 49.36  
21       for 16 weeks, whichever occurs first. The court shall provide in its order that the  
22       parent shall make child support payments calculated under s. 767.511 (1j) or (1m)  
23       after the obligation to make payments ordered under this paragraph ceases.

24       **SECTION 17.** 767.553 (1) (a) of the statutes is amended to read:



**BILL**

1           767.553 (1) (a) An order for child or family support under this chapter may  
2       provide for an annual adjustment in the amount to be paid based on a change in the  
3       payer's income if the amount of child or family support is expressed in the order as  
4       a fixed sum and ~~based on the percentage standard established by the department~~  
5       determined in the manner provided under s. ~~49.22 (9)~~ 767.511 (1j). No adjustment  
6       may be made under this section unless the order provides for the adjustment.

7           **SECTION 18.** 767.553 (1) (b) of the statutes is amended to read:

8           767.553 (1) (b) An adjustment under this section may not be made more than  
9       once in a year and shall be determined ~~on the basis of the percentage standard~~  
10      ~~established by the department in the manner provided~~ under s. ~~49.22 (9)~~ 767.511 (1j).

11          **SECTION 19.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

12          767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either  
13      of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,  
14      or a county child support agency under s. 59.53 (5) if an assignment has been made  
15      under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either  
16      party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.  
17      49, a court may, except as provided in ~~par.~~ pars. (b) and (c), do any of the following:

18          **SECTION 20.** 767.59 (1c) (a) 1. of the statutes is amended to read:

19          767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the  
20      amount and payment of maintenance or child support and the appropriation and  
21      payment of the principal and income of property held in trust. The court may revise  
22      and alter a child support order regardless of whether the amount of support was  
23      determined by the court, by court approval of a stipulation of the parties, or through  
24      arbitration.

25          **SECTION 21.** 767.59 (1c) (c) of the statutes is created to read:

**BILL****SECTION 21**

1           767.59 (1c) (c) In an action under this section to revise a judgment or order as  
2           to the amount of child or family support, the court must revise the judgment or order  
3           as to the amount of child or family support if the court finds a substantial change in  
4           circumstances.

5           **SECTION 22.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

6           767.59 (1f) (b) (intro.) In an action under this section to revise a judgment or  
7           order with respect to the amount of child support, any of the following constitutes a  
8           rebuttable presumption of a substantial change in circumstances sufficient to justify  
9           require a revision of the judgment or order:

10          **SECTION 23.** 767.59 (1f) (b) 4. of the statutes is amended to read:

11          767.59 (1f) (b) 4. ~~A~~ If the action is one to revise a judgment or order with respect  
12          to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183  
13          (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), a difference between  
14          the amount of child support ordered by the court to be paid by the payer and the  
15          amount that the payer would have been required to pay based on the percentage  
16          standard established by the department under s. 49.22 (9) if the court did not use the  
17          percentage standard in determining the child support payments and did not provide  
18          the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or  
19          767.511 (1n), whichever is appropriate.

20          **SECTION 24.** 767.59 (1f) (bm) of the statutes is created to read:

21          767.59 (1f) (bm) In an action under this section to revise a judgment or order  
22          with respect to an amount of child or family support ordered under this chapter, the  
23          court shall find a substantial change in circumstances sufficient to require revision  
24          of the judgment or order if the amount of child support ordered by the court to be paid  
25          by the payer is different from the amount that the payer would have been required

**BILL**

1 to pay under s. 767.511 (1j) and the court did not determine child support payments  
2 in the manner provided under s. 767.511 (1j) and did not provide the information  
3 required under s. 767.511 (1n).

4 **SECTION 25.** 767.59 (1f) (c) (intro.) of the statutes is amended to read:

5 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or  
6 order with respect to an amount of child support, any of the following may constitute  
7 a substantial change of in circumstances sufficient to ~~justify~~ require revision of the  
8 judgment or order:

9 **SECTION 26.** 767.59 (2) (a) of the statutes is amended to read:

10 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment  
11 or order with respect to child support payments, it shall do so ~~by using the percentage~~  
12 ~~standard established by the department~~ in the manner provided under s. 49.22 (9)  
13 767.511 (1j).

14 **SECTION 27.** 767.59 (2) (b) of the statutes is amended to read:

15 767.59 (2) (b) Upon request by a party, the court may modify, by reducing but  
16 not by increasing, the amount of revised child support payments determined under  
17 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by  
18 the greater weight of the credible evidence, that ~~the use of the percentage standard~~  
19 amount of child support determined in the manner provided under s. 767.511 (1j) is  
20 unfair to the child or to any of the parties.

21 **SECTION 28.** 767.59 (2m) of the statutes is created to read:

22 767.59 (2m) MINIMUMS ARE VOID. In an action under this section to revise a  
23 judgment or order with respect to the amount of child support, any provision in the  
24 judgment or order that sets a minimum amount of child support that may be ordered  
25 in the future in the event that the child support order is revised under this section

**BILL**

1 or a substantially similar law of another state is void and may not be given effect by  
2 the court, regardless of when the judgment or order was granted.

3 **SECTION 29.** 767.85 (2) of the statutes is amended to read:

4 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),  
5 the court shall consider those factors that the court is required to consider when  
6 granting a final judgment on the same subject matter. If the court makes a  
7 temporary child support order that deviates from the amount of support that would  
8 be required by using the percentage standard established by the department under  
9 s. ~~49.22 (9)~~ 767.511 (1j), the court shall comply with the requirements of s. 767.511  
10 (1n). The court may make a temporary child support order that deviates from the  
11 amount that would be required under s. 767.511 (1j) by reducing, but not by  
12 increasing, that amount.

13 **SECTION 30. Initial applicability.**

14 (1) GENERAL. Except as provided in subsection (2), this act first applies to child  
15 or family support orders, including temporary orders and orders revising judgments  
16 or orders previously granted, that are granted on the effective date of this subsection.

17 (2) ANNUAL ADJUSTMENTS. The treatment of section 767.553 (1) (b) of the  
18 statutes first applies to adjustments made on the effective date of this subsection.

19 (END)